Queen Industrial Products Corporation *and* International Brotherhood of Electrical Workers, Local 369, AFL–CIO. Cases 9–CA–35556, 9–CA–35682, and 9–CA–37718

November 16, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon charges filed by the Union on December 10, 1997, February 2, 1998, and June 12, 2000, and an amended charge filed on January 28, 1998, the General Counsel of the National Labor Relations Board issued a second consolidated complaint (complaint) on August 14, 2000, against Queen Industrial Products Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.[1] Although the Respondent filed an answer to the complaint, it withdrew that answer on October 11, 2000.

On October 13, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On October 13, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on October 11, 2000. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, until about June 13, 1997, Queen Products Company, Inc. (Queen), a corporation, was engaged in the manufacture of electrical materials, devices, and equipment at its Louisville, Kentucky facility. On about June 13, 1997, MBA Acquisition Co. Ltd. (MBA), purchased the business of Queen, for the purpose of reselling or liquidating the business, and through Queen, until about June 16, 1997, continued to operate Queen's business in basically unchanged form and employed the same employees who were previously employees of Queen. Consequently, MBA continued the employing entity and was a successor of Queen.

On about June 16, 1997, as finalized on June 24, 1997, American Queen Products Corporation (American) purchased Queen's former business from MBA, and until about June 27, 1997, continued to operate the business of Queen and MBA in basically unchanged form and employed, as it made clear at the time of the purchase, the same employees who were previous employees of Queen and MBA. As a result, American continued the employing entity and was a successor of Queen and MBA.

On about June 27, 1997, American's owner, Ghouse A. Shareef (Shareef), incorporated the Respondent, and on about July 2, 1997, he filed articles of incorporation with the Commonwealth of Kentucky to operate the former business of Queen, MBA, and American. Since then, the Respondent has continued to operate the former business of Queen, MBA, and American in basically unchanged form, and has continued to employ, as it made clear at the time it assumed operations, the same employees who were previous employees of Queen, MBA, and American.

Based on the operations described above, the Respondent has continued the employing entity and is a successor to Queen, MBA, and American.

At all material times, the Respondent has been engaged in the manufacture of electrical materials, devices, and equipment at Louisville, Kentucky. During the 12 months immediately preceding the issuance of the complaint, the Respondent, in the conduct of its operations described above, sold and shipped goods valued in excess of $50,000 from its Louisville, Kentucky facility directly to points outside the Commonwealth of Kentucky.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] On April 29, 1998, the Regional Director approved an informal settlement agreement between the Respondent and the Union that resolved Cases 9–CA–35556 and 9–CA–35682. In conjunction with the issuance of the instant complaint, however, the Regional Director vacated and set aside the settlement agreement on the grounds that the Respondent had failed to undertake all the actions required under the terms of the settlement agreement.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Ghouse A. Shareef held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On the dates set forth below, the Respondent, by Shareef at its Louisville, Kentucky facility, engaged in the following conduct in order to discourage employees' activity on behalf of the Union:

1. On about June 27, 1997, Shareef informed employees that he had bought the business, not the Union, and that he was moving the business to a different location where the employees were already represented by a labor organization.

2. On about August 28, 1997, Shareef advised employees, in writing, that the Respondent was not obligated to anything, including maintaining fringe benefits, and that the Respondent would create its own benefit plans.

3. On about August 28, 1997, Shareef threatened that if employees did not return a form indicating whether they desired to move to a new location that vacancies at that facility would be filled by newly-hired employees.

4. On about October 8, 1997, Shareef threatened to deny employees benefits if they did not clock in and out for lunch.

5. On about October 19, 1997, Shareef told an employee that employees would not be entitled to vacations.

6. In November 1997, Shareef informed employees that they would not receive vacation or be eligible for vacation.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Respondent at its Louisville, Kentucky facility, in the manufacture of electrical materials, devices, and equipment, and shipping department employees, but excluding all professional employees and all guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit set forth above and, until about June 13, 1997, the Union was recognized as the representative by Queen. Since that date, the Union has been the representative of the unit employed by MBA, American, and the Respondent, based on the relationships and for the periods described above, and has been recognized as such representative by MBA, American, and the Respondent.

This recognition was embodied in successive collective-bargaining agreements between Queen and the Union, the most recent of which was effective from August 1, 1995 through July 31, 1998.

In December 1998, the Respondent and the Union entered into a collective-bargaining agreement effective by its terms from June 15, 1998 through July 31, 2001.

Since about June 27, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees employed by the Respondent.

From about June 27, 1997 through December 1997, and from about July 1999 until about February 8, 2000, the Respondent failed to maintain the medical insurance which the unit employees had previously received.

In August 1997, the Respondent failed to grant personal days to employees who maintained less than a 3-percent absentee rate, even though employees who maintained an absentee rate of less than 3 percent previously had been entitled to personal days.

On about October 19, 1997, the Respondent denied employees an extra week's vacation to which they would previously have been entitled on the basis of their seniority.

On about January 1, 1998, the Respondent changed insurance carriers, increased medical insurance deductions for employees, and commenced making deductions for life insurance from employees' paychecks.

The above subjects relate to wages, hours, or other terms or conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union, without the Union's consent, and without affording the Union an opportunity to bargain with the Respondent with respect to such conduct and the effects of such conduct.

Since about April 26, 2000, the Union, by facsimile, has requested that the Respondent furnish the Union with the following information:

> 1. The Respondent's financial statements for the past three years.
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> 2. The Respondent's income tax returns for the last two years.
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> 3. A list of any materials or chemicals that could be considered potentially hazardous, to which the employees could or would have been exposed while working at the Louisville facility.
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> 4. A copy of the documents pertaining to a claim or lien on the Respondent's equipment and assets, and the name of the banks or financial institutions to whom the Respondent is indebted.
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> 5. Evidence that the health insurance premiums have been paid and are current on all employees.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about April 26, 2000, except for the 1997 and 1998 tax returns and the material safety data sheets, which have been furnished, the Respondent has failed and refused to furnish the Union with the requested information described above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees. The Respondent thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[2] Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to maintain the unit employees' previous medical insurance from June 27, 1997 through December 1997, and from July 1999 until February 8, 2000, and by changing insurance carriers on January 1, 1998, we shall order the Respondent to make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by (a) failing in August 1997 to grant personal days to employees who maintained less than a 3-percent absentee rate; (b) in October 1997, denying an extra week's vacation to employees who were entitled to it on the basis of their seniority; (c) increasing medical insurance deductions for employees on January 1, 1998; and (d) making deductions for life insurance from employees' paychecks beginning on January 1, 1998, we shall order the Respondent to make the employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

[2] The General Counsel states in the complaint that he "does not seek any additional relief for the conduct alleged" in par. 7 of the complaint, which pertains to the statements and threats discussed above made by Shareef to employees at the Louisville facility on June 27, August 28, October 8 and 19, 1997, and in November 1997. Accordingly, although we find that these statements and threats violated Sec. 8(a)(1) of the Act, we will not provide the standard cease-and-desist and notice posting remedies concerning them.

ORDER

The National Labor Relations Board orders that the Respondent, Queen Industrial Products Corporation, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Brotherhood of Electrical Workers, Local 369, AFL–CIO as the exclusive representative of the employees in the appropriate unit set forth below, by failing to maintain the unit employees' previous medical insurance; changing insurance carriers; increasing medical insurance deductions for employees; making deductions for life insurance from employees' paychecks; failing to grant personal days to employees who maintained less than a 3-percent absentee rate; and denying an extra week's vacation to employees who were entitled to it on the basis of their seniority. The unit is:

> All employees employed by the Respondent at its Louisville, Kentucky facility, in the manufacture of electrical materials, devices, and equipment, and shipping department employees, but excluding all professional employees and all guards and supervisors as defined in the Act.

(b) Refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the status quo ante that existed before the Respondent, on January 1, 1998, changed insurance carriers, increased medical insurance deductions for employees, and commenced making deductions for life insurance from employees' paychecks.

(b) Make whole the unit employees for any loss of benefits or expenses resulting from its failure to maintain the unit employees' previous medical insurance from June 27, 1997 through December 1997, and from July 1999 until February 8, 2000, and its changing of insurance carriers on January 1, 1998, as set forth in the remedy section of this decision.

(c) Make whole the unit employees for any loss of earnings suffered as a result of the Respondent's failing in August 1997 to grant personal days to employees who maintained less than a 3-percent absentee rate; denying, in October 1997, an extra week's vacation to employees who were entitled to it on the basis of their seniority; increasing medical insurance deductions for employees on January 1, 1998; and making deductions for life insurance from employees' paychecks beginning on Janu-

ary 1, 1998, as set forth in the remedy section of this decision.

(d) Furnish the Union the information requested by it on about April 26, 2000, except for the 1997 and 1998 tax returns and the material safety data sheets, which have been furnished.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Louisville, Kentucky, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 27, 1997.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 16, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with International Brotherhood of Electrical Workers, Local 369, AFL–CIO as the exclusive representative of the employees in the appropriate unit set forth below, by failing to maintain the unit employees' previous medical insurance; changing insurance carriers; increasing medical insurance deductions for employees; making deductions for life insurance from employees' paychecks; failing to grant personal days to employees who maintained less than a 3-percent absentee rate; and denying an extra week's vacation to employees who were entitled to it on the basis of their seniority.

> All employees employed by us at our Louisville, Kentucky facility, in the manufacture of electrical materials, devices, and equipment, and shipping department employees, but excluding all professional employees and all guards and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the status quo ante that existed before we, on January 1, 1998, changed insurance carriers, increased medical insurance deductions for employees, and commenced making deductions for life insurance from employees' paychecks.

WE WILL make whole the unit employees for any loss of benefits or expenses resulting from our failure to maintain the unit employees' previous medical insurance from June 27, 1997 through December 1997, and from July 1999 until February 8, 2000, and our changing of insurance carriers on January 1, 1998, with interest.

WE WILL make whole the unit employees for any loss of earnings suffered as a result of our failure in August 1997 to grant personal days to employees who maintained less than a 3-percent absentee rate; our denial, in October 1997, of an extra week's vacation to employees who were entitled to it on the basis of their seniority; our increasing medical insurance deductions for employees on January 1, 1998; and our making deductions for life insurance from employees' paychecks beginning on January 1, 1998, with interest.

WE WILL furnish the Union the information requested by it on about April 26, 2000, except for the 1997 and 1998 tax returns and the material safety data sheets, which have been furnished.

QUEEN INDUSTRIAL PRODUCTS CORPORATION